

27836. Adulteration of nutmegs. U. S. v. 140 Cases of Nutmegs. Hearing on claimant's petition for release of goods. Decree of condemnation. Product released under bond and costs taxed against claimant. (F. & D. No. 39303. Sample No. 26766-C.)

This product was found to be wormy and moldy.

On March 31, 1937, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 140 cases of nutmegs at Newark, N. J., alleging that the article had been shipped on or about October 3, 1936, by B. H. Old & Co., Inc., from New York, N. Y., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Produce of Netherlands East Indies."

The article was alleged to be adulterated in that it consisted in whole or in part of a filthy and decomposed vegetable substance.

On May 1, 1937, B. H. Old & Co., Inc., filed a claim and answer admitting the allegations of the libel, consenting to the entry of a decree, and petitioning release of the goods for export. On September 24, 1937, the case came on for hearing and the court handed down the following opinion:

FORMAN, *District Judge*: Libel by the government to forfeit a quantity of nutmegs which were imported by the claimant, and upon entry found by the Department of Agriculture to be adulterated in that the shipment was decomposed beyond the tolerance allowed by the Department.

Upon representations made by the claimant, the Department permitted the shipment to remain in possession of the claimant pending an opportunity to "repick" the nutmegs and for their re-examination. Later the shipment, or a large part of it, was found in the possession of another concern. When the claimant was confronted by this fact, it admitted that it had violated its understanding with the government and had transferred the nutmegs to a customer. Moreover, it was also admitted that an effort was made to induce the government representative to believe that other nutmegs in the possession of the claimant constituted the shipment in question so that the government representative would be deceived into passing the shipment on re-examination.

The claimant presents no defense to the forfeiture, but prays now that he be permitted to return these goods to the original shipper in Europe so as to avoid the loss of approximately \$3,000 (three thousand dollars) which he has been, or with which he will be charged, unless the shipment is returned. In view of the perfidy committed by the claimant, or its agent, it would seem that such a request would come with but little grace.

However, affidavits have been filed by claimant which indicate that it is a "one man" corporation. Mr. B. H. Old has been doing business under this style for many years. At the time of the original occurrence he was out of his office much of the time due to illness, and the affairs of the company were left in the hands of one Harry J. Schlichting who, though dignified with titles of Secretary and Treasury of the corporation, owned no share of stock in the corporation and was its employee. By mistake he sold the adulterated shipment, and then to cover his error, he attempted to deceive not only his employer, Mr. Old, who frequently inquired as to the result of the re-examination but also endeavored to substitute other nutmegs for the department's investigator to examine in lieu of the merchandise with which he had parted. When the alert government agent discovered the fraud, this employee confessed and told where the shipment could be found. This is the first time the claimant has been brought into court, although he has been in the spice business for over 40 years, and a spice importer for many years.

It is true that but for the vigilance of the government agent a consummate fraud would have been practiced. It is also true that the claimant, a corporation, can only act through its agent and Schlichting, even shorn of his doughty titles, is still the employee or agent of the claimant for whose acts it is bound to answer. If the claimant were attempting to induce the court's discretion to flow toward an order having for its purpose a re-working, renovation, or other operation on the merchandise involving another governmental examination of the property, the court would not be inclined to trust the claimant in such connection. However, it asks only to save the merchandise from actual destruction and permit its return to the original shipper in Europe. What harm can come of this? I can see none. The goods will leave the country under the eye of the department. There is the hazard that they may be returned to our shores, but then we shall expect the same careful vigilance to prevent their entry as was evidenced heretofore.

There remains one question only. How is the government to be compensated for the expense and trouble to which it has been placed by the willful deceit of the claimant's agent? The answer is equally obvious. If the claimant is to be privileged to realize on these goods it should be permitted to do so only on terms which will compensate the government for its loss aforesaid.

Therefore, let a decree for the forfeiture of the goods be entered providing, however, that the same may be reshipped out of the country under the supervision of the Department of Agriculture, or its designated representative, which supervision shall be at the cost of the claimant, on condition that the claimant also pay the sum of three hundred dollars into the Treasury of the United States in lieu of costs hereof, or else the forfeited merchandise shall be destroyed.

On September 24, 1937, a decree was entered in accordance with the opinion.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27837. Adulteration of blackberry preserve. U. S. v. 24 Cases, each containing among other products, one or two cans of Blackberry Preserve. Default decree of condemnation and destruction. (F. & D. No. 39305. Sample Nos. 23974-C, 36153-C.)

Examination showed that the blackberry preserve in this shipment was made from moldy blackberries.

On May 20, 1937, the United States attorney for the District of Montana, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 24 cases, each containing among other products one or two cases of blackberry preserve, at Missoula, Mont., alleging that the article had been shipped in interstate commerce on or about December 21, 1936, by Eyres Transfer & Warehouse Co. from Seattle, Wash., and charging adulteration in violation of the Food and Drugs Act. The cases were labeled in part: "School Boy * * * Preserves Packed for The Rogers Co." The blackberry preserve was labeled in part: "School Boy Brand Pure Blackberry Preserves Distributed by the Rogers Co., Seattle."

The blackberry preserve was alleged to be adulterated in that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance, moldy blackberries.

On July 30, 1937, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27838. Adulteration of raisins. U. S. v. 2,100 Boxes of Seedless Raisins. Decree of condemnation. Product released under bond conditioned that it be freed of the deleterious ingredient. (F. & D. No. 39357. Sample No. 37161-C.)

This product was found to contain hydrocyanic acid in an amount which might have rendered it injurious to health.

On April 9, 1937, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 2,100 boxes of seedless raisins at Philadelphia, Pa., alleging that the article had been shipped in interstate commerce on or about October 26, 1936, by the Bonner Packing Co. from Stockton, Calif., and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: (Packages) "Bonner's Seedless Raisins."

It was alleged to be adulterated in that it contained an added poisonous and deleterious ingredient, hydrocyanic acid, which might have rendered it injurious to health.

On September 28, 1937, the Bonner Packing Co., Stockton, Calif., having appeared as claimant for the product, a decree of condemnation was entered containing a provision that it might be released under bond conditioned that it should not be disposed of until freed of the deleterious substance.

HARRY L. BROWN, *Acting Secretary of Agriculture.*

27839. Adulteration of canned peas. U. S. v. 403 Cases and 402 Cases of Canned Peas. Default decrees of condemnation and destruction. (F. & D. Nos. 39372, 39388. Sample Nos. 32845-C, 32850-C.)

This product was weevil-infested.

On April 15 and April 17, 1937, the United States attorney for the District of Oregon, acting upon reports by the Secretary of Agriculture, filed in the district court libels praying seizure and condemnation of 805 cases of canned peas at Hillsboro, Oreg., alleging that the article had been shipped in interstate com-